

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF APPEALS AND INTERFERENCES**

Appellants:	Siebers et al.	)	Examiner:	Elizabeth M. Cole
		)		
Application No.:	10/733,162	)	Group Art Unit:	1794
		)		
Filed:	December 11, 2003	)	Customer Number:	22827
		)		
Confirmation No.:	5959	)	Deposit Account:	04-1403
		)		
Title:	"Disposable Scrubbing Product"	)	Attorney Docket No.:	KCX-651 (18385)
		)		

**RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF**

Commissioner for Patents  
Post Office Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Appellants submit the following status of related appeals and interferences section and related proceedings appendix sections to overcome the November 10, 2009 Notice of Non-Compliance.

## **2. RELATED APPEALS AND INTERFERENCES**

The following is a list of prior and pending appeals, judicial proceedings or interferences known to the appellant which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of decisions rendered by the BPAI are attached.

<b>Application Number</b>	<b>Appeal Number</b>	<b>Appellant</b>	<b>Appellant's Legal Representative</b>	<b>Assignee</b>	<b>Status</b>
10/036,736	2009-006344	Chen et al.	Dority & Manning, P.A.	Kimberly-Clark Worldwide, Inc.	Decision Rendered by BPAI on September 23, 2009 <b>Copy attached</b>
10/321,277	Not Yet Assigned	Chen et al.	Dority & Manning, P.A.	Kimberly-Clark Worldwide, Inc.	<b>No Decision</b> Rendered as of November 18, 2009
10/321,831	2008-5803	Chen et al.	Dority & Manning, P.A.	Kimberly-Clark Worldwide, Inc.	Decision Rendered by BPAI on January 7, 2009 <b>Copy attached</b>
10/733,169	Not Yet Assigned	Zhou et al.	Dority & Manning, P.A.	Kimberly-Clark Worldwide, Inc.	Order Rendered by BPAI Returning Undocketed Appeal to Examiner September 8, 2009; Examiner's Statement of Correction September 16, 2009 <b>Copy attached</b>

11/022,323	Not Yet Assigned	Arendt et al.	Dority & Manning, P.A.	Kimberly- Clark Worldwide, Inc.	<b>No Decision</b> Rendered as of November 18, 2009
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## 10. RELATED PROCEEDINGS APPENDIX

The following is a list of prior and pending appeals, judicial proceedings or interferences known to the appellant which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of decisions rendered by the BPAI are attached.

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11/022,323	Not Yet Assigned	Arendt et al.	Dority & Manning, P.A.	Kimberly- Clark Worldwide, Inc.	<b>No Decision</b> Rendered as of November 18, 2009
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**REMARKS**

Appellants' submit that the Appeal Brief is now in accordance with 37 C.F.R. § 41.37(c)(1)(x). Please charge any additional fees required by this Appeal Brief to Deposit Account No. 04-1403.

Respectfully submitted,

DORITY & MANNING, P.A.

  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,736	12/21/2001	Fung-Jou Chen	KCX-484 (17155)	3665
22827 7590 09/23/2009 DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			EXAMINER STEPHENS, JACQUELINE F	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 09/23/2009	DELIVERY MODE PAPER

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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

*Ex parte* FUNG-JOU CHEN, JULIE BEDNARZ, JEFF LINDSAY, DAWN  
HOUGHTON, LESLIE TANERI, TAMMY BALZAR, and PEIGUANG  
ZHOU

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Appeal 2009-006344  
Application 10/036,736  
Technology Center 3700

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Decided: September 23, 2009

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Before TONI R. SCHEINER, DEMETRA J. MILLS, and  
RICHARD M. LEOVITZ, *Administrative Patent Judges*.

LEOVITZ, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on the appeal by the patent applicants from the patent examiner's rejection of claims 1-8, 67-77, 79-86, 89-97, 114-121, 127, 129-134, 136, and 137 under 35 U.S.C. §§ 102 and 103. The Board's



jurisdiction for this appeal is under 35 U.S.C. § 6(b). We reverse the rejections.

#### STATEMENT OF THE CASE

The claims concern a sponge-like product with an abrasive surface. The product can be used for cleaning (Spec. 1). Claims 1-8, 67-77, 79-86, 89-97, 114-121, 127, 129-134, 136, and 137 are pending and stand rejected by the Examiner as follows:

- Claims 1-5, 7, 67-71, 73, 75-77, 79-85, 92-97, 114-117, 120, 121, 127, 129-134, 136, and 137 under 35 U.S.C. § 102(b) as anticipated by Chen (US 5,990,377, Nov. 23, 1999) (Ans. 3); and

- Claim 2, 6, 8, 68, 72, 74, 86, 89, 90, 91, 118, and 119<sup>1</sup> under 35 U.S.C. § 103(a) as obvious in view of Chen (Ans. 5).

Claims 1, 67, 101, 114, and 127 are independent; the remaining pending claims depend on claims 1, 67, 114, and 127 and incorporate all their limitations. Claim 1 is representative and reads as follows:

1. An absorbent sponge-like product for cleaning a surface, the sponge-like product comprising:  
a multi-layer compressible substrate, said substrate comprising a plurality of stacked plies of a textured paper web, the paper web having an Overall Surface Depth of greater than about 0.2mm, the paper web comprising pulp fibers, the paper

---

<sup>1</sup> Claims 101-113 and 135 were listed in the Examiner's statement of the rejection. However, Appellants filed an amendment after the final rejection canceling claims 101-113 and 135 to simplify the issues on appeal (Mar. 13, 2008). On page 2 of the Appeal Brief, Appellants stated that such claims were cancelled and that all amendments had been entered. The Examiner, on page 2 of the Answer, responded that Appellants' summary of the claim status and amendment status was correct. Therefore, we treat claims 101-113 and 135 as cancelled.

web having a basis weight of at least about 10 gsm, the paper web containing a wet strength agent, said plies being attached together;

an outer cover that allows water to pass therethrough, said compressible substrate being enclosed by the outer cover, the outer cover comprising a flexible porous material; and

abrasive particles attached to the outer cover to facilitate scrubbing of the surface, wherein the abrasive particles comprise filler particles or microspheres.

#### ANTICIPATION

Claims 1-5, 7, 67-71, 73, 75-77, 79-85, 92-97, 114-117, 120, 121, 127, 129-134, 136, and 137 stand rejected under 35 U.S.C. § 102(b) as anticipated by Chen (Ans. 3).

#### Statement of the Issue

The issue in this appeal is whether Chen describes an absorbent article with an “abrasive” surface. There are four independent claims on appeal, each which contains an “abrasive” limitation.

Claim 1 is to a “sponge-like product for cleaning a surface” comprising a “multi-layer compressible substrate,” an “outer cover,” and “abrasive particles attached to the outer cover to facilitate scrubbing of the surface, wherein the abrasive particles comprise filler particles or microspheres.”

Claims 67 and 114 are to the same type product as in claim 1. Claim 67 recites that the “abrasive fibers attached to the outer cover to facilitate scrubbing the surface, wherein the abrasive fibers include meltblown shot.” Claim 114 recites that the outer cover has “an abrasive surface defining said primary surface, wherein said abrasive surface comprises meltblown shot.”

Claim 127 is to a method of making a sponge-like pad with a “liquid pervious cover” that “defines an abrasive surface comprising meltblown shot.”

The Examiner found that the adhesive regions on the upper surface of Chen’s absorbent article basesheet satisfied the claimed limitation of “abrasive particle” as in claim 1 and an “abrasive” surface comprising “meltblown shot” as in claims 67, 114, and 127.

Appellants contend that the Examiner erred in finding that Chen’s adhesive satisfies the claimed “abrasive” limitations.

#### Principles of Law

The “Board gives claim language its broadest reasonable interpretation consistent with the specification.” *In re Buszard*, 504 F.3d 1364, 1368 (Fed. Cir. 2007).

“[I]n an ex parte proceeding to obtain a patent, . . . the Patent Office has the initial burden of coming forward with some sort of evidence tending to disprove novelty.” *In re Wilder*, 429 F.2d 447, 450 (CCPA 1970).

A claim limitation is inherent in the prior art if it is necessarily present in the prior art, not merely probably or possibly present. *Rosco v. Mirror Lite*, 304 F.3d 1373, 1380 (Fed. Cir. 2002). “[T]he dispositive question regarding anticipation is whether one skilled in the art would reasonably understand or infer from the prior art reference’s teaching that every claim [limitation] was disclosed in that single reference.” *Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 1368 (Fed. Cir. 2003) (internal quotation marks and alterations omitted).

*Akamai Technologies Inc. v. Cable & Wireless Internet Services Inc.*, 344 F.3d 1186, 1192 (Fed. Cir. 2003).

The PTO does not have the ability “to manufacture products or to obtain and compare prior art products.” *In re Best*, 562 F.2d 1252, 1255 (CCPA 1977). Thus, once “the PTO shows sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not.” *In re Spada*, 911 F.2d 705, 708 (Fed. Cir. 1990).

#### Findings of Fact

1. Chen describes a dual-zoned, three-dimensional absorbent web for absorbent articles such as feminine pads and diapers (Abstract).
2. The web comprises a basesheet having an upper and lower surface, the upper surface having elevated and depressed regions (col. 7, ll. 37-42).
3. Hydrophobic materials are preferentially deposited on the elevated regions of the basesheet (col. 8, ll. 46-52).
4. The hydrophobic materials are attached by adhesives and other agents, including hot melts, latexes, glues, starch, and waxes (col. 5, ll. 39-42).
5. “Adhesive application can be through meltblown application of hot melt glues and thermoplastic materials, spray or swirl nozzles of melted or dissolved adhesives, printing of adhesive material onto one or both surfaces before joining, and the like.” (Col. 5, ll. 49-53.)
6. The adhesives can be “applied directly to the basesheet by means of spray, mist, aerosol, or droplets in any form, prior to contact of the basesheet with the hydrophobic matter” (col. 5, ll. 53-55).
7. Chen describes an example in which an adhesive is applied to the basesheet (col. 45, ll. 38-41). The “spray adhesive used was 3M #90 High Strength Adhesive.” (*Id.* at col. 45, ll. 51-52.)

8. In this example, Chen states that the “adhesive-containing regions . . . were noticeably stiffer than the surrounding basesheet” (col. 45, ll. 59-60).

### Analysis

All the independent claims in this appeal involve a sponge-like product with an “abrasive” surface for cleaning. The Examiner contends that Chen’s description of surface adhesive which is “noticeably stiffer” than non-coated regions of an absorbent article basesheet meets the “abrasive” limitation. Appellants challenge the Examiner’s finding. Because the term “abrasive” is in dispute in this appeal, we begin our analysis with interpreting its meaning.

Claim language is given its broadest reasonable interpretation consistent with the specification. *In re Buszard*, 504 F.3d at 1368. In this case, the Specification does not provide an express definition of what it means to be “abrasive.” Therefore, we give it its ordinary meaning discerned from a general purpose dictionary: “any material or substance used for grinding, polishing, or smoothing as emery, pumice, or sandpaper.”<sup>2</sup> This definition is consistent with the Specification which describes the abrasive surface as being “for scrubbing” (Spec. 28:23-24), as well as claims 1 and 67 which expressly state that the abrasive is to “facilitate scrubbing.”

The Examiner found that the adhesive applied to the upper basesheet layer of Chen’s absorbent article was an abrasive. The evidence for this finding was Chen’s statement in one example that the “adhesive-containing regions . . . were noticeably stiffer than the surrounding basesheet” (FF8).

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<sup>2</sup> RANDOM HOUSE COLLEGE DICTIONARY 5 (Rev. Ed. 1982).

Thus, this case turns on the question of whether the Examiner satisfied the initial burden of showing that Chen's adhesive is a material or substance used for grinding, polishing, or smoothing as we have interpreted the term "abrasive" to require. *See In re Wilder*, 429 F.2d at 450.

The Examiner has not met her burden. The record lacks evidence or sound reasoning that the "stiffer" adhesive acts as an "abrasive"; or that it would have been understood by persons of ordinary skill in the art to be an "abrasive" material used for grinding, polishing, or smoothing a surface. While an abrasive might accurately be characterized as "stiffer" than surrounding non-abrasive surfaces, the Examiner has not established that every stiff material would serve as an abrasive as required by the claims. Various adhesive type materials are disclosed in Chen (FF4, 5, 7), but the Examiner has not presented a reasonable basis for believing that one such material, when coated on the upper basesheet, would necessarily be an abrasive surface as required by all the claims. *See In re Spada*, 911 F.2d at 708.

#### OBVIOUSNESS

Claim 2, 6, 8, 68, 72, 74, 86, 89, 90, 91, 118, and 119 stand rejected under 35 U.S.C. § 103(a) as obvious in view of Chen (Ans. 5).

The Examiner found that Chen did not disclose, but made obvious certain limitations recited in the dependent claims. This rejection, however, did not address the defect identified above, i.e., that Chen does not describe an "abrasive" as recited in independent claims 1, 67, 114, and 127. Therefore, we are compelled to reverse the rejection of claims 2, 6, 8, 68, 72, 74, 86, 89, 90, 91, 118, and 119 as these depend upon and incorporate all the limitations of claims 1, 67, 114, and 127.

### CONCLUSION OF LAW & SUMMARY

The Examiner erred in finding that Chen's description of adhesive regions on the upper surface of Chen's absorbent article basesheet met the claimed limitation of "abrasive particle" as in claim 1 and an "abrasive" comprising "meltblown shot" as in claims 67, 114, and 127.

The anticipation and obviousness rejections of claims 1-8, 67-77, 79-86, 89-97, 114-121, 127, 129-134, 136, and 137 are reversed.

REVERSED.

Ssc:

DORITY & MANNING, P.A.  
POST OFFICE BOX 1449  
GREENVILLE, SC 29602-1449

Appeal 2009-006344  
Application 10/036,736



<b>Notice of References Cited</b>	Application/Control No. 10/036,736	Applicant(s)/Patent Under Reexamination	
	Examiner	Art Unit	Page 1 of 1

U.S. PATENT DOCUMENTS								
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\*A copy of this reference is not being furnished with this Office action. (See Manual of Patent Examining Procedure, Section 707.05(a).)

\*\*APS encompasses any electronic search i.e. text, image, and Commercial Databases.

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Notice of References Cited

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10/321,831	12/17/2002	Fung-Jou Chen	KCX-537B (17853B)	2635
22827 7590 01/07/2009 DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			EXAMINER PIZIALI, ANDREW T	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* FUNG-JOU CHEN,  
JEFFREY D. LINDSAY, JULIE BEDNARZ,  
and PEIGUANG ZHOU

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Appeal 2008-5803  
Application 10/321,831<sup>1</sup>  
Technology Center 1700

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Decided: January 07, 2009

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Before ADRIENE LEPIANE HANLON, TERRY J. OWENS, and  
MARK NAGUMO, *Administrative Patent Judges*.

NAGUMO, *Administrative Patent Judge*.

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<sup>1</sup> Application 10/321,831, *Meltblown Scrubbing Product*, filed 17 December 2002. The Specification is referred to as the “831 Specification,” and is cited as “Spec.” The real party in interest is listed as Kimberly-Clark Worldwide, Inc. (Supplemental Brief on Appeal, filed 7 February 2008 (“Br.”), 1.)

DECISION ON APPEAL

**A. Introduction**

Fung-Jou Chen, Jeffrey D. Lindsay, Julie Bednarz, and Peiguang Zhou (“Chen”) timely appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1-33, 35-41, 43-48, 50-55, 57-98, 100-112, and 114-131. The only other pending claims are claims 42, 49, and 99, which have been withdrawn from consideration and are not before us. We have jurisdiction under 35 U.S.C. § 6(a). We AFFIRM-IN-PART.

The subject matter on appeal relates to abrasive webs in combination with cellulosic webs or certain additives. The webs are said to be useful as abrasive cleaning products.

Claims 1, 32, and 88 are representative. We reproduce the disputed parts of the claims below:

Claim 1

An abrasive cleaning product comprising:

a scrubbing pad including an abrasive layer and an  
absorbent layer

said abrasive layer defining an outer surface of the  
scrubbing pad,

\* \* \* \*

said absorbent layer comprising a fibrous cellulosic web.

(Claims App., Br. 17; paragraphing and indentation added; the elided text recites limitations relating to the aggregate fibers that Chen has not disputed.)

Claim 32

A meltblown web comprising  
abrasive polymeric fibers in a planar substrate, \* \* \* ,  
said meltblown web being attached to a fibrous cellulosic  
web.

(Claims App., Br. 21; paragraphing and indentation added; the elided text  
recites limitations relating to the fibers and web that Chen has not disputed.)

Claim 88

A polymeric meltblown web comprising  
abrasive polymeric fibers  
\* \* \* \* and  
an additive selected from the group consisting of  
a soap, a detergent, a buffering agent, an antimicrobial  
agent, a skin wellness agent, a lotion, a medication, a  
polishing agent, and mixtures thereof.

(Claims App., Br. 26; paragraphing and indentation added; the elided text  
recites limitations relating to the abrasive polymeric fibers that Chen has not  
disputed.)

The Examiner has maintained the following grounds of rejection:<sup>2</sup>

- A. Claims 1-15, 17-19, 21-33, 35-39, 43, 45-48, 51-55, 57-64, and  
68-87 stand rejected under 35 U.S.C. § 103(a) in view of the  
combined teachings of Mozelack<sup>3</sup>, Barzuza,<sup>4</sup> and any one of  
Feint,<sup>5</sup> Linnersten,<sup>6</sup> Paas,<sup>7</sup> or Favre.<sup>8</sup>

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<sup>2</sup> Examiner's Answer mailed 9 April 2008. ("Ans.").

<sup>3</sup> Brian Mozelack et al., *Melt-Blown Tubular Core Elements and Filter Cartridges Including the Same*, U.S. Patent 6,342,283 B1 29 January 2002, based on an application filed 22 July 1999.



- B. Claims 16 and 44 stand rejected under 35 U.S.C. § 103(a) in view of the combined teachings of Mozelack, Barzuza, Kochesky,<sup>9</sup> and any one of Feint, Linnersten, Paas, or Favre.
- C. Claims 20 and 65 stand rejected under 35 U.S.C. § 103(a) in view of the combined teachings of Mozelack, Barzuza, either Ouellette<sup>10</sup> or Nakajima,<sup>11</sup> and any one of Feint, Linnersten, Paas, or Favre.
- D. Claims 40, 41, and 50 stand rejected under 35 U.S.C. § 103(a) in view of the combined teachings of Mozelack, Barzuza, Hou,<sup>12</sup> and any one of Feint, Linnersten, Paas, or Favre.
- E. Claims 88-96, 101-106, 108-112, 114-120, and 122-131 stand rejected under 35 U.S.C. § 103(a) in view of the combined teachings of Mozelack, Barzuza, Patrick,<sup>13</sup> and any one of Feint, Linnersten, Paas, or Favre.
- F. Claims 97-98 and 107 stand rejected under 35 U.S.C. § 103(a) in view of the combined teachings of Mozelack, Barzuza, Patrick, Hou, and any one of Feint, Linnersten, Paas, or Favre.

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<sup>4</sup> Ytzhak Barzuza, *Plural Layer Fiber Filter element and System for Cleaning*, U.S. Patent 5,514,270 (1996).

<sup>5</sup> Stephen D. Feint, U.S. Patent 5,130,023 (1992).

<sup>6</sup> Staffan B. Linnersten, U.S. Patent 5,152,890 (1992).

<sup>7</sup> Norbert Paas, U.S. Patent 5,431,706 (1995).

<sup>8</sup> Eric Favre, U.S. Patent 5,472,719 (1995).

<sup>9</sup> Francis F. Kochesky and Bryan F. Paschall, U.S. Patent 5,284,704 (1994).

<sup>10</sup> William R. Ouellette et al., U.S. Patent 5,989,478 (1999).

<sup>11</sup> Yuji Nakajima and Morio Abe, U.S. Patent 6,207,600 B1 (27 March 2001, based on a PCT Application filed 28 November 1997).

<sup>12</sup> Kenneth C. Hou et al., U.S. Patent 6,565,749 B1 (20 May 2003), based on an application filed 31 July 2000.

<sup>13</sup> Gilbert Patrick et al., *Antimicrobial Filter Cartridge*, U.S. Patent 5,868,933 (1999).

- G. Claim 100 stands rejected under 35 U.S.C. § 103(a) in view of the combined teachings of Mozelack, Barzuza, Patrick, Kochesky, and any one of Feint, Linnersten, Paas, or Favre.
- H. Claim 121 stands rejected under 35 U.S.C. § 103(a) in view of the combined teachings of Mozelack, Barzuza, Patrick, either Ouellette or Nakajima, and any one of Feint, Linnersten, Paas, or Favre.

Chen has argued only that the Examiner erred regarding certain limitations of the independent claims 1, 32, and 88.<sup>14</sup> Accordingly, all claims covered by Rejections A-D stand or fall with claims 1 or 32 as rejected in Rejection A. Similarly, all claims covered by Rejections E-H stand or fall with claim 88 as rejected in Rejection E.

More specifically, Chen contends that the Examiner erred in rejecting claim 1 because none of the references teaches or suggests an abrasive cleaning pad. (Br. 6-7.) The Examiner responds that the structures taught or obvious in view of the applied prior art can function like cleaning pads. (Ans. 19.)

Chen argues further that the Examiner failed to establish a reason to use the cylindrical core disclosed by Mozelack as a structure found on an outer surface (of a filter), as required by claim 1. (Br. at 8.) Similarly, Chen argues that the Examiner failed to establish a reason to modify the shape of the cylindrical filters taught by Mozelack to the planar shaped filters taught by Barzuza—i.e., to the planar geometry required by claim 32. (Br. 12-13.)

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<sup>14</sup> Chen has not disputed the Examiner's finding (Ans. 4) that the meltblown core described by Mozelack corresponds to the abrasive layer recited in claims 1, 32, and 88. Nor has Chen disputed the Examiner's findings (Ans. 5) that Feint, Linnersten, Paas, or Favre (the "cellulosic references") disclose filtering elements made from fibrous cellulose.

We refer to these arguments as the “structural arguments” in the Discussion, *infra*.

The Examiner responds that the selection of suitable shapes for filters from among known shapes for filters would have been obvious. (Ans. 19-20). Hence, the Examiner concludes, a flat pad filter, such as the one illustrated by Barzuza, would have been an obvious variant of a cylindrical filter given the general level of skill in the art based on the suitability of the shape. (*Id.* at 20.) The Examiner appears to be of the opinion that a flat filter would also meet the limitation, “said abrasive layer defining an outer surface” recited in claim 1.

Additionally, Chen argues that the Examiner failed to establish that Mozelack teaches or suggests an absorbent layer (Br. 9-10), or that the prior art provides a reason to modify the filters described by Mozelack by using any of the cellulosic filter elements taught by the cellulosic references as suggested by the Examiner (*id.* at 10-12.) A cellulosic web, according to Chen, would not have the same functionality as the filtration fibers described by Mozelack, and would destroy the function of the Mozelack filter. (*Id.* at 11.) Chen concludes that the Examiner failed to establish a prima facie case of obviousness for the presence of an absorbent layer comprising a fibrous cellulosic web, as required by claim 1 (*id.* at 12), or for the meltblown web being attached to a fibrous cellulosic web, as required by claim 32 (*id.*). We refer to these arguments as the “absorbent” argument, and as the “cellulosic web” argument in the Discussion, *infra*.

The Examiner responds that the substitution of suitable materials, such as cellulosic fibers (Ans. 5 and 21-22), which are taught by the

cellulosic references, would have been obvious. In this regard, the Examiner argues that the “filtration fiber layer taught by the applied prior art is absorbent because the fibers allow liquid to be taken in through the pores or interstices of the layer to be filtered.” (Ans. 5 and Ans. 21.)

A dispositive issue, with regard to the rejection of claim 1, is, has the Examiner shown that Mozelack and Barzuza provide a reason to the ordinary worker to make a filter having the core taught by Mozelack as an outer surface layer? Similarly, with regard to the rejection of claim 32, has the Examiner shown that Mozelack and Barzuza provide a reason to the ordinary worker to make a flat filter with a layer of the core element fibers and a layer of the filtration zone fibers taught by Mozelack?

Another dispositive issue with respect to claims 1 and 32 is, has the Examiner shown that the references provide an adequate motivation to use an absorbent fibrous cellulosic web together with an abrasive layer of fibers as required by claim 1, or attached to an abrasive meltblown web as required by claim 32?

Finally, regarding claim 88, Chen contends that there is no motivation, other than impermissible hindsight, to combine the disclosure by Patrick of a filter formed from a yarn or nonwoven web impregnated with an antimicrobial agent, with the filtration core described by Mozelack, to obtain a meltblown web as recited in claim 88. (Br. 14-15.)

The Examiner argues that the substitution of antibacterial agents would have been the obvious use of a known material for its known function in a similar circumstance. (Ans. 13 and 25.)

The dispositive issue with respect to claim 88 is, has Chen shown reversible error in the Examiner's reason to use antimicrobial agents in the webs taught by Mozelack?

**B. Findings of Fact**

Findings of fact ("FF") throughout this Decision are supported by a preponderance of the evidence of record.

The 831 Specification

1. According to the 831 Specification, abrasive scrubbing pads commonly include a non-absorbent abrasive material combined with an absorbent sponge-like backing. (Spec. 1:3-8.)
2. Such prior art scrubbing pads are said to be expensive and difficult to clean. (Spec. 1:12-15.)
3. The claimed invention is said to overcome these problems by providing a product having "at least two distinct layers, an abrasive layer and an absorbent fibrous layer such as a layer of tissue made from paper making fiber . . . or other known cellulosic webs." (Spec. 2:1-4.)
4. The abrasive layer is described generally at pages 2-8 and more specifically at pages 20-31 of the 831 Specification.
5. Notably, the abrasive layer is described as having, in embodiments, "a relatively open structure that provides high permeability, allowing gas or liquid to readily pass through the abrasive layer." (Spec. 7:24-25.)
6. The absorbent layer is described generally at pages 8-9, and more specifically at pages 31-37 of the 831 Specification.

7. Notably, the absorbent layer is described in terms of a paper or cellulosic web. (E.g., Spec. 8:14-19; 31:24-33.)
8. In the words of the 831 Specification, “[a]s used herein, the term ‘cellulosic’ is meant to include any material having cellulose as a significant constituent, and specifically comprising about 20 percent or more by weight of cellulose or cellulose derivatives.” (Spec. 12:14-16.)
9. The 831 Specification describes further embodiments in which “the scrubbing product may contain other additives associated with either of the primary layers such as soaps, detergents, buffering agents, antimicrobial agents, skin wellness agents, lotions, medications, polishing agents, and the like.” (Spec. 9:28-31.)

Mozelack

10. Mozelack describes cylindrical disposable filter cartridges said to be useful for filtering fluids (Mozelack 1:14-16), including water (*id.* at 6:59-7:10.)
11. The filter cartridges are said to have a core element formed of a non-filtering, self-supporting non-woven mass of synthetic polymer fibers, and at least one annular filtration zone layer formed of a mass of non-woven synthetic polymer fibers. (Mozelack 2:59-64.)
12. The core is said to be made of fibers having a sufficient diameter and meltblown to a density such that they do not perform a filtering function, but they do form a highly open structural support for the filtration fibers during manufacture and during filtration. (Mozelack 3:2-11.)

13. Both the core element and the filtration fibers may be meltblown.  
(Mozelack 6:30-32; 7:48-50.)

14. In the words of Mozelack, “[v]irtually any thermoplastic polymer which is capable of being melt blown may be used in accordance with the present invention.” (Mozelack 7:55-57.)

15. Mozelack does not expressly describe or suggest fibrous cellulosic webs as components of the cylindrical filters.

Barzuza

16. Barzuza describes fluid filters “comprising a plurality of layers 2 composed of fibers . . . [that] are arranged to assume a substantially uniform orientation, wherein each of the fibers is disposed in close proximity to its adjacent fibers.” (Barzuza 2:3-7.)

Patrick

17. Patrick describes antimicrobial filter cartridges for purifying fluids wherein the filtration system “is formed from layers of yarn and/or nonwoven webs or mats treated with an antimicrobial agent.”  
(Patrick 1:11-15.)

18. According to Patrick, the purpose of the antimicrobial agent is to “inhibit growth of the bacterial and viral contaminants in the filtered flow to significantly reduce . . . bacterial contaminants within the water flowing through the filtration system.” (Patrick 1:18-22.)

The Cellulose References

19. Feint (3:25-27), Linnersten (2:40-43), Paas (6:7-8), and Favre (8:33-37) describe filtering elements made from cellulose.

**C. Discussion**

The burden is on Chen, as the Appellant, to demonstrate reversible error in the Examiner's rejections. *See, e.g., In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness . . ."). "The ultimate determination of whether an invention would have been obvious is a legal conclusion based on underlying findings of fact." *Kahn*, 441 F.3d at 985 (citation omitted). Our reviewing court has explained repeatedly that "mere identification in the prior art of each element is insufficient to defeat the patentability of the combined subject matter as a whole." *Id.* at 986. In practice, as the Federal Circuit has explained, the articulation of the basis for the conclusion of obviousness must "explain the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious." *Id.*, citation omitted. As the Supreme Court has emphasized, "[t]o facilitate review, this analysis should be made explicit." *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007).

Claims 1 and 32

Initially, we construe the claimed subject matter. The recitation of an "abrasive cleaning product" in claim 1 and "scrubbing pad" in claim 32 are, in the absence of a definition in the 831 Specification, mere recitations of



intended use. Chen has not directed our attention to such a definition in the 831 Specification, and we have not found such a definition explicitly or implicitly in our own review of the supporting disclosure. We therefore hold that claim 1 “reads on” any article that meets all the structural limitations recited in the claims. Accordingly, Chen’s arguments (Br. 6-7) that the Examiner erred by failing to come forward with references describing abrasive cleaning products or scrubbing pads are without merit.

Chen’s structural, absorbent, and cellulosic web arguments, however, are persuasive of reversible error. Obviousness is a bar to patentability to protect the public from being excluded from practicing what would have been done in the ordinary course of work by those skilled in the art. Most inventions involve the assembly of pre-existing structures in new combinations and new inter-relations. Thus, establishing a prima facie case of obviousness requires more than merely establishing that a set of structures were known in the art in various embodiments of articles such as filters prior to an applicant’s filing date. The role of references is to provide evidence that the combinations would have been suggested by what was known, and thus to avoid hindsight reconstruction of the claimed subject matter. Thus, a demonstration of obviousness requires a showing that the ordinary person would have combined or substituted various structures in one reference with other structures in other references in a way that is within the scope of the claimed subject matter, based on the teachings of those references, bringing ordinary knowledge and creativity to the task.

The Examiner’s rejection of claims 1 and 32 fails for lack of an explanation, based on the references, of why a person having ordinary skill in the art would have modified Mozelack’s filters, which have the “abrasive

layer” in the “wrong” place (inside), and which have the “wrong” shape (cylindrical), to resemble filters having the “abrasive layer” on an outside surface or having the “right” (planar) shape shown by Barzuza. In the Examiner’s rejection of claims 1 and 32, Mozelack stands, as evidence of layer structure, for no more than that two meltblown webs can be prepared to form two layers—an inner layer and an outer layer—in a cylindrical filter. Similarly, Barzuza stands, in the Examiner’s rejection, as no more than evidence supporting the proposition that planar filters are known. The Examiner has not directed our attention to any credible evidence that the structure or function of the supporting core element in filters described by Mozelack corresponds to the structure or function of any element in the filters described by Barzuza. The structural and functional similarity of the filtering layers of Mozelack and Barzuza appear to start and stop with filtering. Whereas the filtering layers of Mozelack are disorderly and highly entangled, the filtering layers 2 of Barzuza are highly ordered, all the filtering elements being parallel to one another. Neither reference, to paraphrase the formal definition of relevant evidence,<sup>15</sup> has any tendency to make the existence of any fact that is of consequence to the determination of the obviousness of the claimed products more probable or less probable than it would be without the evidence. Put another way, the Examiner has not established that the cylindrical filters described by Mozelack and the planar filters described by Barzuza are equivalents that would have been obvious to substitute, one for the other.

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<sup>15</sup> Fed. R. Evid. 401.

Moreover, as Chen points out (Br. 9-11), Mozelack does not appear to suggest an “absorbent” layer. In this regard, we note that in claim 1, the term “absorbent” is further limited by the requirement that the absorbent layer comprise a fibrous cellulosic web. From everyday experience, it is generally recognized that cellulosic webs, such as paper towels (*cf.* Spec. 8:15-19), are absorbent in the sense that individual fibers take up liquids that “wet” the fibers, such as water. Thus, the “absorbent layer comprising a fibrous cellulosic web” recited in claim 1 does not merely allow water to enter into interstices in the web.<sup>16</sup> Mozelack describes both the core element (“abrasive layer”) and the filtering zone as being meltblown fibers made from thermoplastic polymers. The Examiner has not directed our attention to any credible evidence in Mozelack that the thermoplastic meltblown fibers would inherently absorb water and thus be a functional equivalent of cellulosic webs described by the cellulosic references. Thus, consistent with Chen’s argument, the Examiner has not shown that a fibrous cellulosic web is a functional equivalent for the meltblown webs taught by Mozelack, and that it would therefore have been *prima facie* obvious to substitute cellulosic webs for the meltblown thermoplastic filtering webs described by Mozelack.

We conclude that the Examiner has failed to establish a *prima facie* case that either of claims 1 or 32 would have been obvious over the cited prior art. We therefore REVERSE Rejections A through D.

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<sup>16</sup> The required presence of cellulosic fibers in claim 1 renders the Examiner’s broad interpretation of the term “absorbent” as being applicable to any fiber layers that “allow liquid to be taken in through the pores or interstices of the layer” (Ans. 5) incomplete as a measure of what properties would bring a web into the scope of claim 1.

Claim 88

Claim 88 is fully met by a polymeric meltblown web comprising certain abrasive polymeric fibers and an antimicrobial agent as an additive. Chen does not dispute the Examiner's findings that the recited abrasive fibers read on the core layer described by Mozelack. Nor does Chen dispute the Examiner's findings that Patrick discloses antimicrobial treated yarn as a filtering material, or that Patrick teaches that the purpose is "to eliminate and inhibit growth of the bacterial and viral contaminants in the filtered flow" (Patrick 1:17-20). Rather, Chen argues that there is no motivation to modify the structural core of Mozelack. (Br. 15.)

This argument does not demonstrate reversible error in the Examiner's rejection. The common purpose of the references, filtering liquids, including water, and the express purpose of Patrick, to use antimicrobial treatment to suppress microbial contamination, provide a person having ordinary skill in the art with an adequate reason to combine the references. Moreover, claim 88 uses the transitional term "comprising," which is "open" language that permits the presence of non-recited materials and structures in embodiments within the scope of the claimed subject matter. *In re Baxter*, 656 F.2d 679, 686 (CCPA 1981) ("[t]he term 'comprises' permits the inclusion of other steps, elements, or materials.") Thus, contrary to Chen's argument, claim 88 does not limit the placement of the additive to the abrasive polymeric layers. Claim 88 is fully met if the antimicrobial additive is added to any part of the filters described by Mozelack.

Because we conclude that Chen has not demonstrated reversible error in the Examiner's rejection of claim 88, we AFFIRM Rejections E through H.

**D. Order**

We REVERSE the rejection of claims 1-15, 17-19, 21-33, 35-39, 43, 45-48, 51-55, 57-64, and 68-87 35 U.S.C. § 103(a) in view of the combined teachings of Mozelack, Barzuza, and any one of Feint, Linnersten, Paas, or Favre.

We REVERSE the rejection of claims 16 and 44 under 35 U.S.C. § 103(a) in view of the combined teachings of Mozelack, Barzuza, Kochesky, and any one of Feint, Linnersten, Paas, or Favre.

We REVERSE the rejection of claims 20 and 65 under 35 U.S.C. § 103(a) in view of the combined teachings of Mozelack, Barzuza, either Ouellette or Nakajima, and any one of Feint, Linnersten, Paas, or Favre.

We REVERSE the rejection of claims 40, 41, and 50 under 35 U.S.C. § 103(a) in view of the combined teachings of Mozelack, Barzuza, Hou, and any one of Feint, Linnersten, Paas, or Favre.

We AFFIRM the rejection of claims 88-96, 101-106, 108-112, 114-120, and 122-131 under 35 U.S.C. § 103(a) in view of the combined teachings of Mozelack, Barzuza, Patrick, and any one of Feint, Linnersten, Paas, or Favre.

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We AFFIRM the rejection of claims 97-98 and 107 under 35 U.S.C. § 103(a) in view of the combined teachings of Mozelack, Barzuza, Patrick, Hou, and any one of Feint, Linnersten, Paas, or Favre.

We AFFIRM the rejection of claim 100 under 35 U.S.C. § 103(a) in view of the combined teachings of Mozelack, Barzuza, Patrick, Kochesky, and any one of Feint, Linnersten, Paas, or Favre.

We AFFIRM the rejection of claim 121 under 35 U.S.C. § 103(a) in view of the combined teachings of Mozelack, Barzuza, Patrick, either Oullette or Nakajima, and any one of Feint, Linnersten, Paas, or Favre.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

**AFFIRMED-IN-PART**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,169	12/11/2003	Peiguang Zhou	KCX-652 (18776)	5949
22827 7590 09/16/2009 DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			EXAMINER COLE, ELIZABETH M	
			ART UNIT	PAPER NUMBER
			1794	
			MAIL DATE	DELIVERY MODE
			09/16/2009	PAPER

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10733169	12/11/03	ZHOU ET AL.	KCX-652 (18776)

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**EXAMINER**

Elizabeth M.. Cole

ART UNIT	PAPER
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1794

20090914

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**Commissioner for Patents**

The final rejection of 9/19/08 inadvertently omitted claims 8 and 63 from the statement of rejection in paragraph 2, page 2 of the action, but treated the limitations of claim 8, (regarding stitching through the abrasive layers), in lines 13-14 of page 2, and the limitations of claim 63, (regarding the absorbent layers are a plurality of paper layers), in lines 7-8 of page 2 of the rejection and in the corresponding paragraph on pages and 3 and 4 of the examiner's answer. The statement of rejection at page 3 of the examiner's answer should include claims 8 and 63.

/Elizabeth M. Cole/  
Primary Examiner, Art Unit 1794





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22827 7590 09/08/2009 DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			EXAMINER COLE, ELIZABETH M	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 09/08/2009	DELIVERY MODE PAPER

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* PEIGUANG ZHOU, FUNG-JOU CHEN, JEFFREY DEAN  
LINDSAY, IVAN SCHRODT, FRANK G. DRUECKE,  
and JULIE BEDNARZ

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Application 10/733,169  
Technology Center 1700

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Mailed: September 8, 2009

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Before TINA D. LEE, *Supervisory Paralegal Specialist*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on August 24, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER

GROUND OF REJECTION TO BE REVIEWED UPON APPEAL

A review of the file finds that the grounds of rejection to be reviewed on appeal of the claims as provided in the Examiner's Answer mailed May 8, 2009 under the heading "Grounds of rejection to be Reviewed on Appeal" does not contain all of the claims that were as set forth in the last Office action of record. The grounds of rejection to be reviewed on appeal as provided in the Examiner's Answer must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. *See also Manual of Patent Examining Procedure (MPEP) § 1207.02 (8<sup>th</sup> ed. Rev. 6, Sept 2007) for details.*

A review of the last Office action, including any mailed Advisory Action(s) finds that Claims 8 and 63 were mentioned in the Final Rejection, but were not included in the statement of rejections in either the Final Rejection or the Examiner's Answer.

Clarification of the record is required for all Grounds of rejection to be reviewed on appeal for all claims.

CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1) to provide a “paper” (PTOL-90) clarifying the status of claims 8 and 63; or
- 2) if necessary, to vacate the Examiner’s Answer mailed May 8, 2009 and generate a new Examiner’s Answer setting forth the correct Grounds of rejection to be reviewed on appeal and to correct other sections of the Answer as may be required; and
- 3) for such further action as may be required.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

Tdl/tkl

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